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U.S. Congress. House.

Transfer of steamship "Martha Washington"

Washington

1920

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Transfer of Steamship "Martha Washington"

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HEARINGS

BEFORE THE

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS
THIRD SESSION

WEDNESDAY, DECEMBER 15, 1920

TO PROVIDE FOR THE TRANSFER OF THE STEAMSHIP "MARTHA WASHINGTON" TO COSULICH SOCIETA TRIESTINA DI NAVIGAZIONE, AN ITALIAN CORPORATION OF TRIESTE, AND DIRECTING THE U. S. SHIPPING BOARD TO MAKE DELIVERY OF THE SAID STEAMSHIP AND TO DETERMINE, AWARD, AND PAY JUST COMPENSATION FOR USE OF THE SAID STEAMSHIP

WASHINGTON
GOVERNMENT PRINTING OFFICE
1920

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES.

HOUSE OF REPRESENTATIVES.

WILLIAM S. GREENE, Massachusetts, *Chairman.*

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RENE G. DE TONNANCOUR, *Clerk.*

TRANSFER OF STEAMSHIP "MARTHA WASHINGTON."

COMMITTEE ON THE MERCHANT MARINE AND FISHERIES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., December 15, 1920.

The committee met at 2 o'clock p. m., Hon. William S. Greene (chairman) presiding.

Present: Members of the committee; also, Hon. Charles E. Hughes and Edward Sandford, esq., appearing as counsel on behalf of Cosulich Societa Triestina di Navigazione.

The CHAIRMAN. We are ready to hear you, Judge Hughes, upon bill H. R. 14895, which follows:

A BILL To provide for the transfer of the steamship Martha Washington to Cosulich Societa Triestina di Navigazione, an Italian corporation of Trieste, and directing the United States Shipping Board to make delivery of the said steamship and to determine, award, and pay just compensation for use of the said steamship.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest of the United States in and to the passenger steamship Martha Washington, which steamship was taken over by the United States by virtue of an Executive order of the President dated May 11, 1918, made pursuant to the joint resolution approved May 12, 1917, be, and it hereby is, transferred and vested in Cosulich Societa Triestina di Navigazione, an Italian corporation of Trieste.

SEC. 2. That the United States Shipping Board is hereby authorized and directed to pay the amount awarded to Cosulich Societa Triestina di Navigazione dition and free and clear of liens to the said Cosulich Societa Triestina di Navigazione at the first port at which she shall arrive after the passage of this act, or, if that be inconvenient, at such other port as may be mutually agreed upon by the United States Shipping Board and said Cosulich Societa Triestina di Navigazione.

SEC. 3. That the United States Shipping Board is further authorized and directed to determine and to award to Cosulich Societa Triestina di Navigazione just compensation for the use of the said steamship from May 11, 1918, to the date of delivery thereof as above provided.

SEC. 4. That the United States Shipping Board is further authorized and directed to pay the amount awarded to Cosulich Societa Triestina di Navigazione out of any unexpended moneys now or hereafter appropriated for the payment of claims or compensation for the use of vessels.

STATEMENT OF HON. CHARLES E. HUGHES ON BEHALF OF COSULICH SOCIETA TRIESTINA di NAVIGAZIONE.

Mr. HUGHES. Mr. Chairman and gentlemen of the committee, I appear on behalf of the Italian corporation, the Cosulich Societa Triestina di Navigazione, in support of H. R. 14895, which provides for the transfer of the steamer *Martha Washington* to this corporation and for the payment of just compensation.

I may say at the outset that the ground of the application is, briefly speaking, that this, in truth and in fact, Italian ship in equity ought to be returned to Italy; in other words, that the United States ought not to confiscate this ship as against Italy when it is found to be, in truth, an Italian ship.

I shall briefly state the facts which underlie the application. You have before you a short memorandum which gives the substance of the matter; also you have a brief in support of the petition which states the facts more in detail. This ship, the *Martha Washington*, was built in 1908 and was registered in Trieste. Trieste at that time was under Austrian sovereignty. Trieste was a part of that Province of Austria which was known as the Province of Litorale. It comprised Trieste and adjacent territory, which was part of what was called and has been known as Italia Irredenta—the unredeemed Italy—that portion of territory which Italy not only coveted but believed, in right, belonged to her. Italy, in the war, thought that as a result of the war her just claim to that territory, populated mostly by Italians and dominantly Italian in sympathy, would be restored to her. And in that expectation she was not disappointed.

This port of Trieste, which was always in fact an Italian port, although under Austrian sovereignty, became in law an Italian port as a result of the war; this corporation, Cosulich Societa Triestina di Navigazione, became an Italian corporation, and all the ships belonging to this Italian corporation, which Italy herself had seized because they had flown the Austrian flag while Trieste was under dominant Austrian sovereignty, were finally returned to that corporation which was regarded and should be regarded as an Italian corporation. The *Martha Washington*, however, alone of all the ships owned by this corporation, happened to be in the port of New York and was seized by our Government. The ship was very properly seized, and there is no question at all here with regard to the legality of the seizure.

Permit me to say a word with respect to the status of the ship from the standpoint of our law and action. In August, 1917, the *Martha Washington*, being in the port of New York, was requisitioned for use as the ship of a neutral nation. At that time a state of war with Austria had not yet been declared and, in accordance with the policy of the Government to obtain such shipping as was available, this ship was requisitioned for use. She continued in the service of the United States under that requisition until after the declaration of war with Austria in December, 1917, and then, on May 11, 1918, by Executive order, title to the ship was taken by the United States. That Executive order was made by the President pursuant to the joint resolution of Congress authorizing such action.

I am very desirous that as we proceed in the statement of the matter everything that is said shall be abundantly supported and demonstrated, because when we get through with the statement of facts, of course, we must proceed upon some assumption as to the facts in a discussion of the policy which this bill embodies. If you will look at Appendix B in this longer memorandum, on page 19, you will find a copy of the Executive order in question, under date of May 11, 1918, and you will see that in that Executive order is set forth the joint resolution of Congress of May 12, 1917, to which I have referred. Then you will find, on page 20, the order itself that the possession and title of this vessel should be taken over. Accordingly, the title to the vessel being thus taken, it continued to be employed in the service of the Government. It was employed as a transport for such time as the Government needed its use as a transport. After that it was held for account of the Shipping Board in the South American service as a passenger vessel.

When the question first came up as to the delivery of this ship to the Italian corporation and the payment of compensation, the matter naturally went before the Shipping Board. The Shipping Board allowed compensation for the use of the vessel throughout the period from the time of the original requisitioning until the taking of title by the Executive order on May 11, 1918. The Shipping Board divided that compensation into two parts, one part for the period preceding the declaration of war with Austria and the other part for the subsequent period down to the time of the Executive order taking title. You will find the report of the Shipping Board in Appendix C of this brief. The facts are recited. And then, on page 23, you will find the award. These amounts paid for compensation down to May 11, 1918, amounted to about $600,000.

Now, the Shipping Board also had before it the application for the return of the vessel and for compensation after that date. But the Shipping Board took the position that that was not a question for it to determine. You will observe what was said in the first paragraph of this report—that is, the first paragraph of the recommendation at the end of the report—on page 23:

> After hearing and consideration of the claim, this committee recommends that the claimants be remitted to the State Department to establish the Italian citizenship of the claimant as a prerequisite to the delivery of the vessel and compensation therefor after May 11, 1918.

Thereupon the matter was taken up with the State Department and, as I understand it, the State Department was satisfied as to the Italian character of the corporation and that the matter should be proceeded with upon the assumption that this was an Italian corporation. The State Department, however, took the view that the effect of this Executive order, under the authority of the joint resolution of Congress, was to vest the title in the United States; consequently, the title being vested in the United States, it was not for the Executive to transfer the title; that that was beyond the power of the Executive, and, of course, was hence a matter with which the department was not concerned. So that the title having vested in the United States, it is Congress alone that can transfer title, and the whole question, therefore, comes before Congress in the presentation of this bill.

A little later I shall refer to a communication which has been addressed, on behalf of the State Department, under date of December 8, 1920, to Senator Lodge, with respect to the status of the matter from the standpoint of the State Department. And I may indicate now, briefly—I shall read the exact language later—that, as I understand it, the State Department was completely satisfied of the quality and character of this corporation as being Italian.

Mr. EDMONDS. Does that include the status of the corporation in 1914 and the status to-day, or is it just the present status of the corporation?

Mr. HUGHES. It includes the status of the corporation to-day in the light of the fact that it was originally organized by those of Italian blood and Italian sympathy and has always been controlled by those who were of Italian blood and Italian sympathy, although underlying that they were subject to the domination of Austria until

this portion of Italia Irredenta was redeemed. I will come to the exact situation with respect to the interests in the corporation.

Before I took this matter up last spring, in behalf of the corporation, I desired to be thoroughly satisfied upon this point, because I should not be a party to any requested action to be taken to transfer this ship if I did not understand that it was to be regarded as an Italian ship. In response to iuquiry, the Italian ambassador wrote to me this letter under date of May 17, 1920, which you will find set forth on page 17 of this memorandum as Appendix A. If you will permit me, I will read it. It is short. It is addressed to me:

I have been advised of efforts of Cosulich Societa Triestina di Navigazione to secure redelivery to it of the steamship *Martha Washington* and to obtain compensation for the use of that steamship by the United States, a matter in which my Government takes great interest.

To establish the Italian status of Cosulich Societa Triestina di Navigazione, I take pleasure in advising you officially, so that you may make such use of this letter as you deem proper, that after a most thorough investigation of the company and its stockholders, Cosulich Societa Triestina di Navigazione has been recognized by my Government as in all respects an Italian corporation. As is well known, the management and control of this company from its very inception in Trieste was always exclusively in the hands of Messrs. Fratelli Cosulich, a firm always composed of Italian nationality.

Upon the establishment of the Italian Government for the Province of Venezia Giulia, within which is Trieste, this company was duly recognized by the Italian authorities, and the new name. Cosulich Societa Triestina di Navigazione, was established for this company on May 5, 1919, by decree of the Italian governor of Venezia Giulia, and this change was duly entered upon the official register of the Tribunale Commerciale e Marittimo at Trieste.

I may add that I have been advised by my Government that it has restored to steamship companies of Venezia Giulia all vessels of theirs which were seized in Italian ports during the war.

It may not be inappropriate for me to add that my Government was so well satisfied of the entire loyalty and patriotism of Messrs. Fratelli Cosulich and of Cosulich Societa Triestina di Navigazione that it intrusted to this company the management of its vessels allocated for operation in Trieste service to and from ports in North and South America.

Very truly, yours,

ROMANO AVEZZANA.

With reference to this family that is referred to as the Fratelli Cosulich, I may say this: The name "Cosulich," I understand, is the Italian form of an original Croate name in German or Austrian. The immediate founder of the family, in the sense of the one who emerged into importance by reason of skill in business matters and the establishment of this particular line of activity, was Capt. Antonia Felix Cosulich, who was born and resided in the small island of Lussin, in the Adriatic, which is an island just south of the peninsula of Istria. He established quite a business and his sons continued it. These sons were known as the Brothers Cosulich, or Fratelli Cosulich. They formed, having a number of ships, a corporation, and, of course, this corporation was formed by them at the place where they did business, at Trieste. And being subject to Austria, of course it was technically an Austrian corporation.

Mr. WHITE. May I ask a question right there? Is there anything in Austrian law that compelled a subject of Austria to register the vessel under the Austrian law, or could these people, being Italians in sympathy, have registered their vessel under the Italian law?

Mr. HUGHES. Oh, no. They had to register under the Austrian law. It was registered under the Austrian law—had to be—and had to fly the Austrian flag. Now, you will observe its history stated

succinctly in pages 4, 5, 6, and 7 of this brief. You will find that the Fratelli Cosulich were originally concessionaries for the establishment of this corporation. You will find that they established this corporation and that they owned a number of ships, and that finally, in 1908, the *Martha Washington*, built at Glasgow, was built for them and delivered to them and registered. You get quite a picture of the situation if you will look at the photographic copy of the registry, being Appendix F to this brief. There you will see that the whole certificate is in Italian. The whole thing is Italian except the seal and the stamp, which, of course, import the sovereignty that had jurisdiction over the registry and the ship. But this being actually Italian in the personnel of the men employed in the undertaking, and that whole section being Italian by virtue of the great preponderance of the Italian population, it was very natural their proceedings should be carried on in the Italian language, and their certificate of registry consequently is found in the Italian language.

Mr. CHINDBLOM. Did that situation exist in other parts of the Austrian Empire, so that the business was done in other languages than German—for instance, in the Croatia and Slavonia countries?

Mr. HUGHES. That is true. It indicates back of that the reason for it; and in this particular section, where Italians predominated, you have that fact as a very important fact when you consider the whole relation of Italy to that territory.

Mr. DAVIS. You have stated that the owners of this vessel were of Italian blood and sympathy and residents of what was then Austrian territory. Were they, as a matter of fact, citizens of Austria?

Mr. HUGHES. Oh, yes; they had to be. In other words, you take a man, no matter what his Italian lineage, if he was born in Trieste, although they were almost all Italians there, of course, he became an Austrian citizen by virtue of his birth; and now he is an Italian citizen by virtue of the fact that Italy has obtained sovereignty over that territory.

Now, going on with the statement with respect to the condition of the corporation, what the Italian ambassador has so definitely stated would hardly require any suggestion in support as a matter of fact, because, really, while I appear here not for the Italian Government, of course, it being an Italian corporation, the appearance is with the cordial sympathy and support of the Italian Government, and it is the Italian Government that says, "Such and such is the fact," as stated in the ambassador's letter to me. We have been at great pains, in order that the exact situation should be known in all its parts—we have nothing whatever to conceal—to go into quite a careful analysis of the interests of this corporation and what it is.

Mr. HARDY. If the owners of these vessels were really Italians in sympathy at the time they registered this vessel, was there any difficulty in their organizing an Italian corporation and having this vessel registered in an Italian port? They could then have utilized it in the Adriatic and, perhaps, in all the trade they did utilize it. Was there anything to prevent them from carrying their vessel to an Italian port and giving it Italian registry?

Mr. HUGHES. Of course, it would be quite impossible unless they abandoned their business in Trieste. In other words, they were men associated with Trieste; their business was in Trieste. They could

not form a corporation at Trieste to be other than an Austrian corporation; they would have to go to Italy and form an Italian corporation and have the domicile of the corporation in Italy.

Mr. HARDY. The reason I ask the question is because it is my knowledge a great deal of American capital was invested in vessels flying a foreign flag before the war.

Mr. HUGHES. The Standard Oil tankers, for example.

Mr. HARDY. A great deal of it was invested in vessels under the British flag. Being an American citizen did not prevent them from registering their vessel in England, for instance, or some other foreign country. Now, was there anything to prevent them doing the same thing? Was there anything that prevented these Italian business men of Italian blood from registering that vessel in Italy, if they wanted to be under the real jurisdiction of Italy?

Mr. HUGHES. The citizenship of the men themselves must be distinguished from the citizenship of the corporation and the registry. For example, in the case to which you here refer—the Standard Oil German tankers—from information we have, I understand the Standard Oil Co. organized a German corporation for the purpose of obtaining that registry and all the rights that went with it. Now, in this case, those men doing business at Trieste, in Italia Irrendenta had to register it as an Austrian vessel.

Mr. HARDY. But could they not have done their business by registering their vessel under Italian registration?

Mr. HUGHES. I am not prepared to say they could. For example, why were the Standard Oil tankers registered by German corporations, if they can do business just as well without that?

Mr. HARDY. We have our own national reasons. They have always claimed they could do business cheaper under a foreign flag.

Mr. HUGHES. I am not prepared to say, as I have not made an examination of the Austrian law with that particular point in view, what could have been done. But what was done was the fact that the vessel was registered in Trieste, by a corporation organized in Trieste, but that the dominant spirit in that corporation was always Italian in fact. What happens now is that the juridical person known as the corporation is under Italian sovereignty and is recognized as an Italian corporation. What happens further is that all the other vessels in like case which were not here—all the vessels of this corporation with the exception of the *Martha Washington*—are recognized by Italy as Italian vessels, and this corporation is recognized as an Italian corporation; and hence, every seizure by Italy during the war has been returned to the corporation. The substantial question, if I may anticipate what I will come to in a moment, is whether the United States, with its power and resources, is going to confiscate this vessel as against Italy because, as the fact turns out, that if it does confiscate it it will be as against Italy.

Mr. EDMONDS. Let me ask you a question right at that point. The steamer *Martha Washington* was run as an individual steamer by a company or was run in a line?

Mr. HUGHES. In a line.

Mr. EDMONDS. The line was owned by citizens of Trieste, who were Austrian citizens, and the corporation was an Austrian corporation as long as Austria controlled that country, and naturally the seizure of the vessel by this country was perfectly correct under all the circumstances?

Mr. HUGHES. Yes.

Mr. EDMONDS. Now Italy takes possession of Trieste and returns the ships to herself, virtually, to her own people, because she has her own people back there again?

Mr. HUGHES. Yes.

Mr. EDMONDS. We are not doing that; we are returning a vessel we seized as an Austrian vessel and rightfully seized, I contend, as an Austrian vessel——

Mr. HUGHES. Yes.

Mr. EDMONDS. And we are returning it now to an Italian concern just because it happens the fortunes of war have enabled Italy to take over that country and made it an Italian country.

Mr. HUGHES. You are returning it, if you do return it, because the United States is not in the business of confiscating property as against Italy, or permitting property to be credited against Germany and Austria, in any plan of reparation, which is Italian in fact. And if I may say a word in advance, Congress passed an amendment last spring with regard to the trading with the enemy act, in reference to the citizens of Alsace-Lorraine. Why? Were they not enemies; is there any question their property was not enemy property; was there any question of the right of the Alien Property Custodian to take custody of that property as enemy property? No. But when it was found, as an act of international justice, that Alsace-Lorraine was returned to France, this Government would never take the position that this country was confiscating property of those who lived in Alsace-Lorraine, as against France. That is the very important point of policy and gave moral obligation and appreciation of what is due to our late associate in the war in this matter.

Now, to return to what I was about to say with regard to the status of this corporation, we have set forth here in substance—I mean in a condensed form—the status of the stock ownership of this corporation. And we have done that, as I have said, so that all the facts should be before you. This corporation had 120,000 shares. We have not been able to account for all of these shares. The reason for that is due to the practice that obtains abroad. As I understand it, in substance that practice is that shares are deposited with banks and credit given to the persons who own the shares, and then the bank has a certain amount of shares which, in fact, belong to those who deposit the shares there and take certificates indicating the fact that the bank holds these shares for them. You will find a statement in respect to this in Appendix D and you will see, on page 25, that the persons interested in the stock are classified in three classes. Class (*a*) persons domiciled in Trieste, Fiume and other places situated in Venezia, Guilia, and Dalmatia; (*b*) persons of nationalities other than the foregoing but not including nationals of Germany, present Austria, present Hungary, Bulgaria, or Turkey; (c) persons, nationals of Germany, present Austria, present Hungary, Bulgaria, and Turkey.

On page 26 you have the ownership of this stock as it was in February, 1920, and you will find that out of the 120,000 shares, 105,000, substantially, are accounted for; and that of these, 101,466 are held

by persons who are not nationals of Germany, present Austria, present Hungary, Bulgaria, and Turkey; and 3,543 shares are held by those who are in the latter category.

You will find the situation at the end of July, 1914, as stated on page 27, and then you will see there quite a block of stock—although 70,000 shares were held by nonenemy citizens, you will find quite a block of stock in the Wiener Bank Verein. There was part of that stock held by citizens of Trieste, by the Cosulich family, and others. You will find some 35,000 shares held by those that come in the category of enemies—that is, Germany, present Austria, present Hungary, Bulgaria, and Turkey. But there is a statement with respect to that which you will see on page 9 of the memorandum that—

Early in 1917 the Vienna banks sold 12,035 of the shares owned by them. There is no precise information as to the purchasers of these shares. However, as only the inhabitants of the Adriatic littoral were interested financially in shipping, Messrs. Cosulich are convinced that most of these shares must have passed into the hands of inhabitants of Italy, Irredenta, and Dalmatia. The result is that when the United States entered the war enemy holdings of shares were substantially less than in July, 1914.

The Vienna banks sold the remainder of their shares in February, 1919, to Fratelli Cosulich and Banca Commerciale Triestina.

So that by February, 1919, the Vienna bank had no longer any shares.

Mr. DAVIS. Is it your contention that the right of the United States can be altered by a transfer of the stock subsequent to the seizure of the vessel?

Mr. HUGHES. Oh, no. My contention is not at all in regard to the power of the United States; my contention is not with regard to anything irregular or illegal or unwarranted in regard to the taking of title to this vessel in May, 1917. My contention is based upon the situation which is now accorded to that vessel, the relation of the Italian Government to that vessel, and the fact that it belongs to an association in Trieste, an Italian corporation, organized by Italians, always controlled by Italians, with a very small minority interest not so held. Now, the question is whether the United States, availing itself of the situation as it existed on May 11, 1918, is going to assert a title as against Italy to property acquired under those conditions. This question addresses itself broadly to a conception of the broad obligation of the United States from a moral standpoint and what fairness and justice requires in dealing with this vessel. The question is not dealt with at all in a technical spirit nor dealt with in any way to combat the right and propriety of the action of the President at the time title was seized.

Let me go a step further with respect to the general situation. Not only was this matter of substance examined carefully by the Italian Government, but it has been the subject of consideration by the State Department; and if you will permit me to read the letter which was addressed to Senator Lodge, and of which, of course, substantial knowledge should be before your committee, I should be glad to do it, because it shows the situation as it appeared from the examination that the State Department made. This is under date of December 8, 1920, from the Department of State, signed by Merle-Smith:

MY DEAR SENATOR LODGE: Confirming my telephone conversation of this morning in reply to your letter of December 6, I am writing you informally certain information with regard to the *Martha Washington* and the proposed legislation directing its delivery to its original owners. I am adding my tentative views pending an opportunity to notify you officially of the position of the department after further study of the matter.

The steamship *Martha Washington* was owned before the war by an Austrian corporation domiciled at Trieste. The information on hand indicates that the majority of the stock was held by citizens of Trieste (Austro-Hungarians), but of Italian blood. Apparently about 12 per cent of the stock was owned by Italian citizens.

If I may interpose there, that means those who were away from the seat of the location and hence were Italian citizens, but it does not detract from the other statement as to those of Italian blood at Trieste.

The ship was of Austrian registry and sailed under the Austrian flag.

The vessel was requisitioned August 31, 1917, in the port of New York by the Shipping Board as a neutral vessel subject to requisition under congressional authority. On May 11, 1918, the title to the vessel was taken over by the United States pursuant to an Executive order under authority of the joint resolution of Congress of May 12, 1917.

Compensation for the use of the vessel was awarded the Trieste Corporation by the Shipping Board on April 16, 1920, covering a period from August 31, 1917, to May 11, 1918. The award amounted to $571,450, subject to a guaranty on the part of the corporation to reimburse the Navy Department for the cost of repairs made to the vessel. It will be noted that the amount included compensation for the use of the vessel from December 7, 1917, the date of the declaration of war against the Austrian Empire, until the date of the taking over of title by the United States. I believe that the sum above stated was paid to the corporation, the right of seizure of the moneys awarded being waived by the Alien Property Custodian with the approval of the Department of State.

If I may pause there: That is very significant of the notion entertained by our Government with regard to the situation at that time.

Subsequently it was argued by the law firm of Haight, Sanford, Smith & Griffin, counsel for the corporation, that compensation for use should be paid for the period from May 11, 1918, to date, and that the ship should be returned to its former owners, since Trieste for all practical purposes has become an Italian city, and the corporation at some time subsequent to the armistice had been recognized by the Italian Government as an Italian organization. Mr. Attolico, the Italian high commissioner to this country, admitted that technically the United States had the right to retain the vessel, but that equitable considerations and dictates of policy should move the United States to return the ship to Italy.

The department took the position in substance that the vessel became the property of the United States on May 11, 1918, and that compensation was not due for the use of the vessel from that date, and that the department could not consider recommending to the President, as had been suggested, that he vacate his order authorizing the acquisition of the title of the vessel, since the disposition of ex-enemy property seized during the war was a matter for congressional action. No recommendation was made by the department that the matter be presented to Congress. On the other hand, Mr. Sanford, of the law firm mentioned, was advised that it was entirely possible that Congress might not desire to take action on such a matter pending consideration of the whole matter of the disposition of ex-enemy property. In addition, it was pointed out that the so-called Wilson-Lloyd-George shipping agreement, dated May, 1919, now before the Senate, might, if ratified, obligate the United States to make certain payments to the Reparation Commission in connection with the acquisition of the vessel.

An expression of opinion regarding the proposed legislation would seem to fall somewhat beyond the scope of the function of this department, but I venture to suggest tentatively the following considerations:

The return of this vessel would undoubtedly be deeply appreciated by the Italian people. The owners of the vessel—the corporation and the majority of its stockholders—though enemies during the war are now Italian nationals. The joint resolution of May 12, 1917, which authorized the seizure of the vessel, contemplates the payment of compensation. In view of the circumstances of the case the vessel might well be ultimately returned in lieu of compensation.

On the other hand, the return of the vessel should be carefully considered in its relation to the larger question of the treatment of seized property belonging to persons formerly of enemy nationality, but now citizens of friendly nations under the terms of the treaty of Versailles. The delivery of the vessel should be considered with reference to the terms of the Wilson-Lloyd-George agreement. Personally I am inclined to believe that should the agreement be ratified, arrangements could be made with the Reparation Commission, when the disposition of enemy shipping has been more definitely arranged, looking to the waiver of any payments by the United States to the commission in connection with this vessel. It would undoubtedly be possible to arrange with the corporation to guarantee the United States against any further payments. I may suggest in addition that the corporation would not appear to be entitled to compensation for the use of the vessel from May 11, as provided in section 3 of the bill, because the vessel has been undoubtedly American property since that date. The payment of compensation for this period might involve an unfortunate precedent. In conclusion it would seem that the obligation of the corporation to reimburse the Navy Department for expense of repairs made on the ship might well be made a condition precedent to the delivery of the vessel.

I am, my dear Senator Lodge, very sincerely,

VAN S. MERLE-SMITH.

Now, I want to take up very briefly the different points made in the letter, and have put before you our observations with respect to suggestions there made. I will comment, of course, at the end on the Wilson-Lloyd-George agreement specifically. It is said here: "The return of this vessel would undoubtedly be deeply appreciated by the Italian people."

There is no question about that. I do not know of any act which the United States or this Government could now perform which would be more gracious with respect to their relations with Italy and their appreciation of our action than the return of this vessel. We do not need the vessel; we are not embarrassed by a lack of ships just now. Italy seriously needs it. It can be made available at once. Money does not compare with the ship as an integer, representing an investment, a going concern, ready for immediate use. Of course it would be deeply appreciated by the Italian people. The State Department says: "The owners of the vessel—the corporation and the majority of its stockholders—though enemies during the war are now Italian nationals."

That is the result of their investigation. Then it says: "The joint resolution of May 12, 1917, which authorized the seizure of the vessel, contemplates the payment of compensation."

I do not detract at all from the authority of the President, or the authority of the Congress to give power to the President, to seize this vessel, but it should be pointed out that this was not a prize in the technical sense; this vessel was not taken into a prize court, as a capture, for the purpose of determining the title. This title was just taken under a joint resolution—rightfully taken, so far as the power of our Government is concerned; rightfully taken, so far as the policy of our Government was concerned, in view of the exigency existing—and, as the State Department says, there was a suggestion in the joint resolution that the payment of compensation was contemplated. That would be natural, because of the historic policy of our country with regard to such seizures. Looking at this for a moment as a seizure of property here, and not condemnation as a prize—and I intend to dwell upon that—let me refer to this last clause in the joint resolution. That refers to findings of the board of survey authorized

to make findings with respect to the value of the vessels taken, and to make written report so that it could be preserved. What were these findings for? The resolution says: "These findings shall be considered as competent evidence in all proceedings on any claim for compensation."

Now, undoubtedly Congress has, in the trading with the enemy act, reserved complete authority to determine the policy, ultimately, with regard to all property of enemy aliens seized; and when this joint resolution was passed, as the State Department well says, there was in contemplation the payment of compensation; and, in view of the circumstances, the State Department says, "The vessel might well be ultimately returned in lieu of compensation." Then the State Department goes on to say that a return of the vessel should be carefully considered in relation to the larger question of the treatment of seized property belonging to persons formerly of enemy nationality, but now citizens of friendly nations under the terms of the treaty of Versailles.

In the first place, let me observe that I believe this is the only case of a ship in this plight or in this condition. I understand this is the only Austrian ship seized; and, so far as there is any distinction in the nature of the property as a vessel, this is a unique case. It is a precedent for nothing else; it stands by itself; and whatever Congress does now, with the idea of doing justice, an act of fairness toward Italy, could not be used as a precedent for any other actions, because there is not any other similar case. But you might very well want to consider the larger question of the treatment of seized property belonging to persons formerly of enemy nationality but now citizens of friendly nations under the terms of the treaty of Versailles.

If I understand what has been done here, I think you have considered that quite carefully. A bill was passed last June amending the trading with the enemy act, and that bill contained the clause, which I want to read to you in a moment; but before I read it I should like to refer to the report of Representative Esch, chairman of the House Committee on Interstate and Foreign Commerce—House Report No. 1089, Sixty-sixth Congress, second session—and which has appended to it a letter from the Attorney General, under date of March 31, 1920, addressed to Representative Esch. Representative Esch in his report says: "The reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney General and the Secretary of State."

Let me read a sentence from the communication of the Attorney General which thus underlies this legislation—the policy of it. In his letter to Representative Esch the Attorney General says:

The Secretary of State has written to me that this Government has recognized that the Provinces of Alsace and Lorraine have now become a part of France, and that, in his opinion, the continued retention by the Alien Property Custodian of property of residents of these Provinces who have acquired French nationality under the Versailles treaty of peace can not fail to have an unfavorable effect upon the relations of the United States and France. The Secretary of State expressed the view that the trading with the enemy act should be so amended as to allow the return of this property. He suggested that I recommend to Congress an amendment to this effect.

No one would have the hardihood to dispute that those who were born and lived as citizens of Alsace-Lorraine, prior to the outbreak of the European war, were German subjects—were German citizens,

and were enemies. No one would ever dare dispute the power of Congress and the right of Congress to take custody of the property of such enemies within the range of the control of the United States and to make such disposition of that property as, in the good judgment of the Congress, it was entitled to make, but always having in mind the historic policy of this Government which, however, would be addressed to a consideration of policy by Congress. The right was complete; the power was complete. The right, of course, is preeminent, but it draws to it various considerations of equity. But in the sense of power, the power was complete; the status of the persons was an enemy status.

Now, with that subject before the House and before the Senate—I believe there was no Senate report,-and this is the report which shows the basis of the action in the passage of the bill—the trading with the enemy act was amended by act of June 5, 1920. The amendment set forth a number of paragraphs, or subparagraphs, detailing the circumstances in which the President should return property that has been seized; and then, in subdivision 8, or at the end of these subparagraphs, is this proviso. Permit me to read it:

Provided, That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part).

The introduction of that peculiar legal locution "and/or" has a very peculiar significance, because of the situation of the provisions of the treaties having effect when three powers had signed. So that instead of saying under the terms of treaties between certain nations on the one hand, and the United States and the British Empire and the others, it says between such nations of the one part and the United States, "and/or"—and the United States, or the three powers.

Now, when you consider the recommendation of the Attorney General and you consider the report of Representative Esch, based upon it and the action taken by Congress, with this very situation as to the Alsatians, to those who were enemy subjects but lived in Alsace-Lorraine and became French nationals, and when you consider one of the objects of the war, in the opinion of France, was to recover Alsace-Lorraine, when you consider what was said in one of the 14 points as to Alsace-Lorraine, when you consider what was done to Alsace-Lorraine, why it was a very natural thing for the United States through its Congress to say, "Why, yes; we had a complete right to take property of the people of Alsace-Lorraine as enemy property, but we are not going to hold it as against France. And now, that that territory belongs to France, if we hold it, we hold it as

against France," that settles the situation; we are not in the business of confiscating the property of French nationals because they happened to live in territory that ought to be French territory and now is French territory.

I fail to see, if I may be rather direct about it, how we are going to deal with Alsace-Lorraine on that basis and keep a ship like this as against Italy. Of course, the one is a ship and we do not have ships, I suppose, in Alsace-Lorraine. There may be some cases of ships which may be involved for all I know, but the point is that here is a part of Italia Irredenta, looked upon by Italy just as France looked upon Alsace-Lorraine; here are people born there as Italians; here are people in business that are Austrian in name, and technically, but really Italians in spirit and in the way they conducted their business. But now Italy has obtained, as France has obtained Alsace-Lorraine, this territory, and if we hold this vessel, we hold it as against Italy. Can you imagine anything more extraordinary, if you want to carry that thought through, than giving Germany or Austria credit, as against what should be paid as damages by them by way of reparation, for the value of this ship? If we follow the thing through, you will find that really you could not do it very likely; you would be deducting this really Italian ship from what Germany and Austria should pay by way of reparation, and of course, the general policy outlined in this general amendment which I have just read is at war with any such suggestion.

Mr. CHINDBLOM. If that were done, could Italy in turn recover from Austria?

Mr. HUGHES. That is a matter I won't say anything about further than this, that so far as I have been able to study the very involved clauses of the Austrian treaty—which has not been ratified by the way—I find nothing in it which militates against our position here; and I assume that would be, so far as they could not make her deliver, a matter of equity in the settlement of what Italy should have. But it has no relation, so far as we can find, to this question.

You will observe this, in this letter from the State Department—a reference to the larger question, if it is to be considered at all, in the light of the character of this unique case, is largely a reference to a matter which has been under consideration by Congress and apparently determined. Now, the State Department goes on to say that "The delivery of the vessel should be considered with reference to the terms of the Wilson-Lloyd George agreement." I want to consider that. Here it is [indicating]; I believe I have here a copy of the so-called Wilson-Lloyd George agreement. It is very short. This, I believe, is an agreement which has not been ratified. I need not read the preliminary clauses, but there are two paragraphs which, should be read—the only two paragraphs which, as I understand it, bear upon this matter. In the third paragraph is this:

In all cases where the ships and boats so to be retained by any such Governments are insufficient to satisfy in full the claims of such Governments, respectively, for war losses in merchant ships the enemy ships which remain and which are to be ceded under the treaty of peace will be divided into three classes, viz, liners, other merchant ships, and fishing boats, and will be distributed to such Governments on the basis of ton for ton and class for class of the ships and boats lost and not replaced by the ships and boats retained, but in proportion to the balances due on the claims of such Governments, respectively.

That clause, as I understand it, does not relate to us, as the next paragraph shows. The next paragraph is the only one which could have a bearing applicable.

As the ships and boats so to be retained will, in the case of Brazil, China, Cuba, Siam, and the United States exceed the total amount of tonnage which would be allocated to these countries were the total enemy tonnage captured, seized, detained, or still in existence shared in proportion to losses of ships and boats during the war, in each such case a reasonable value on the excess of ships and boats over the amount which would result from such a division will be determined. The amount of the value so fixed will be paid over by each such State to the Reparation Commission for the credit of Germany toward the sum due from her for reparation in respect to war losses of merchant ships.

Now, in view of the language of that paragraph and the concluding clause it does not seem to me that this could be regarded as having any bearing on this situation. It can not be conceived that this Italian ship, or this ship *Martha Washington*, with these known facts, would be credited to Germany as against what Germany should pay, and the whole operation of this agreement is to that end if it is applicable at all. It seems to me quite clear it can not be considered applicable; that is was never intended to apply to such a case, and if it was intended to apply to such a case it never could be allowed to have that intended effect. You can not imagine a case in which this Government, I submit, would permit a ship in this situation to be credited to Germany.

Mr. HARDY. But might it not be credited to Austria?

Mr. HUGHES. With respect to that, that would be a matter which would come between Austria and Italy. I will not attempt to give any views upon the Austrian treaty. One would have to be a very thorough student of that document to be competent to discuss a particular question, and certainly I am not going to discuss any question; but I think there is nothing there which militates against the position we take. And also I want to call attention to what the State Department says. It says:

Personally I am inclined to believe that should the agreement be ratified arrangements could be made with the Reparation Commission when the disposition of enemy shipping has been more definitely arranged looking to the waiver of any payments by the United States to the commission in connection with this vessel.

That is, it is the apparent opinion of the State Department that there would not be any insistance, even if any language so read, for the payment of reparation by the United States for this account. Then they go on to say:

It would undoubtedly be possible to arrange with the corporation to guarantee the United States against any further payment.

Mr. CHINDBLOM. I presume it would be very unusual for a successful country, after the conclusion of a war, to take from its antagonist property which, previous to the success of the former country, had escaped—just as this *Martha Washington* had escaped from Austria.

Mr. HUGHES. This whole matter of dealing with property in territory, the sovereignty of which passed, because of considerations of policy and the relation of the people of the territory, to a succeeding sovereign—that whole matter presents a different question from the ordinary question of the disposition of enemy property. And I think

that throughout the various provisions that is recognized, and that was the basis of this recommendation in connection with the amendment of the trading with the enemy act.

You have in this case, as I say, one which is separate from all others in its peculiar facts; and if there is any underlying policy whatever that is deemed to be involved with regard to the treatment of property owned by those who were resident citizens of Germany and Austria and of those portions which have gone, respectively, to France and Italy, then you have to approach a well-determined policy and nothing we have ever done or will do will go against us; and we are not going to confiscate such property as against France on the one hand and Italy on the other.

Mr. HARDY. There is an angle of the subject which seems to present itself vaguely to my mind. This vessel was under the Austrian flag?

Mr. HUGHES. Yes.

Mr. HARDY. It was there by authority of Austria and therefore seized by the United States. That was the cause of the seizure. Now, if its being under the Austrian flag is the cause of the seizure and damage results to this citizen of Italy, is not the remedy of the citizen of Italy against the Austrian Government for the losses he has sustained?

Mr. HUGHES. The same argument would apply to the citizen of Alsace-Lorraine with regard to losses sustained with regard to the seizure here, under the trading with the enemy act, of his property—make your claim against Germany.

Mr. HARDY. Except as to the fact there is no such thing as a flag over property seized here. There is no registry, there is no jurisdiction. Austria had no particular jurisdiction over the private property of individuals. As I understand it, under international law, the private property, and justly so, of a private citizen of a country which may get into war with us, is really sacred.

Mr. HUGHES. And ought to be.

Mr. HARDY. We have no right to take their property away. We did so here as a matter of necessity and we expected the treaty of peace to determine the German Government should compensate its citizens, while we recognized the equity the citizens of Germany in this country might have. The question I am getting at is just a vague angle the case presents to me, whether or not these Italian citizens would not have a claim against the Austrian Government for compensation.

Mr. HUGHES. It would have to be worked out through the Government; it could not be worked out individually. But let me go a little deeper into that, because there is a very interesting thought in what you have suggested. Why is it that the flag of a ship determines its nationality for purposes such as this we have under consideration? Why, it is because the ship is a sailing thing; it must have some symbol which relates to sovereignty, and the flag is the accepted symbol which shows the nationality of the ship. But when you have considered the nationality and all that the flag imports in that regard you have gotten no further than the conclusion that it is, as in this case, an Austrian ship. The individual carries no flag; he has no symbol that identifies him and his citizenship; but that citizenship is none the less real and ascertainable. And when it is found that the citizen was born under the German flag in Alsace-Lorraine, when it

was a part of Germany, he is a German citizen. And there is no more conclusiveness about the flag of the ship and the nationality of the ship than the conclusiveness of the result with respect to his standing and status as a German citizen.

The question then, so far as what I may say technically, determines the status at the time of seizure, admits of no argument and we are not here combating this proposition, which could be very easily advanced. But we have something much more important when we are dealing with the broad question of what we shall do with seized property than a technical consideration of the title to the structure at the time of the seizure. This great Nation, acting through Congress, is not shut up to any technicality in any disposition it may make of seized property. It is bound to consider and undoubtedly will through its Representatives consider what, underlying these technicalities, is the substance of the matter; what in equity and fair dealing is due in the matter; what justice as appreciated by the people of the United States, demands in the matter. Now, when you look at that, we come back to the suggestion with regard to Alsace-Lorraine that we are going to recognize facts; and we had just as much of a case against them, so far as citizenship is concerned, as we could have against any ship. If you are going to take the situation of a ship as a prize and set that apart from any other property that may be owned, a ship—not a man of war, a merchant ship—the ship privately owned, why even there you would not have a basis for distinction, because this was not condemned as a prize.

Mr. EDMONDS. Was this ship run in the Austrian-American line?

Mr. HUGHES. I believe so.

Mr. EDMONDS. Was it subsidized by the Austrian Government?

Mr. HUGHES. I am not informed on that.

Mr. EDMONDS. Was any special subvention given to it by the Austrian Government as a recognition of its nationality?

Mr. HUGHES. I am not prepared to say as to that; but it was owned by this company and it was lying at the port of New York and it was taken over under this Executive order which contemplated the paying of compensation and we evidently in that order reserved the same questions that the trading with the enemy act reserved.

Mr. HARDY. While the argument you make is almost unanswerable as to turning this property back—although, perhaps, I ought not to make that statement—still the payment of damages or compensation for the use of property which was taken, because under an enemy flag, it seems to me would present some strong propositions.

Mr. HUGHES. I am going to address myself to that immediately. Of course, I have thus far been taking up the question of the ship and I was using the letter of the State Department as furnishing a series of propositions with which it was necessary to deal, with respect to the status of the country, with respect to the operation of the Wilson-Lloyd George agreement, if ratified, and other matters which they say should be considered.

Now, without desiring to beat this out to the extent of wearying with reiteration because of any earnestness I may have in presenting the matter, I simply want to bring you to this point, if I may, with respect to the ship, that you have a proposition here of fundamental equity to consider and not any technical question of seizure or the taking of title on May 11, 1918. And I want the committee to understand thoroughly it amounts to this: Italy was our ally or our associate in this war. We fought side by side with Italy. And if this ship is not returned, we are confiscating what they believe to be, and what in fact is, Italian property—property for which Austria should not be credited, property for which certainly Germany should not be credited—and we take an entirely different policy toward Italy in a very extreme case appealing to our sense of justice than we have taken with respect to Alsace-Lorraine.

If I have made it clear with respect to the ship, let me say a word or two in conclusion with respect to compensation.

Mr. CHINDBLOM. Just one word: Could Austria come back and claim, in a subsequent adjustment with us, that she should be credited with this ship?

Mr. HUGHES. I do not think so under these conditions. I do not think there is anything in the Austrian treaty, even if ratified, that would accomplish that result. This is in a separate class and, as I understand it, Austria wipes the slate clean so far as our taking this is concerned, and it is now only a question between us and Italy. I think that is appreciated by Italy and is the fact, that this is between us and Italy. Even the suggestion of the State Department, which is made very properly in abundant caution, is limited by the further suggestion that they think arrangements could be made looking to the waiver of any payments by the United States in connection with this vessel—a suggestion the State Department, I presume, would never make if there were the slightest basis for the idea it could ever be caught there. I am only speaking by way of inference, but I imagine, with the close knowledge of all the documents that might be pertinent, anything in any document anywhere which might embarrass us in this matter would have shown up. There are general possibilities, but I think they have been met.

Mr. EDMONDS. What would you think if we returned the ship to Italy. Don't you think we would be doing fair enough without the payment of any compensation at all, if we return what we regard as legally ours and what we are legally entitled to?

Mr. HUGHES. Let me address myself to that question. You will observe, in the first place, that what the bill proposes with respect to that is not to fix any sum at this time but merely to provide that the United States Shipping Board—this is in section 3—shall award just compensation. That, of course, involves every consideration which would enter into a final determination of just compensation; so that, if there were just compensation paid, somebody would have to determine what it was and to consider all these elements. I am going to assume, for the purposes of this argument, that just compensation, that which is really just, except for the question whether any should be made, so far as that question is concerned, has been determined, and the question is, Shall it be paid? That lies in my mind in this way: If you are returning the ship to Italy on the theory that just and fair dealing with our associate in the war and recognition of the transfer of this sovereignty to Italy really requires us to do that, then are we going to say: "Yes, we took this vessel; you ought to have it; in justice it should be returned to you, but we will keep what advantage we have had through the use of it.

Mr. EDMONDS. Oh, no; you must agree when we took it we had a right to take it.

Mr. HUGHES. Oh, yes.

Mr. EDMONDS. It is only looking at it in the light of events which have occurred since then that makes us feel we ought to return it. We might suppose we took it and would not return it at all because that territory was still Austrian; but looking at it from the point of fact, this part of the country has been returned to Italy.

Mr. HUGHES. Yes.

Mr. EDMONDS. Therefore, why pay compensation to Italy?

Mr. HUGHES. I would like there to suggest the more fundamental point of view; I would say, first, here was this territory returned to Italy, which was returned as spoils of war. Was Italy there as a conqueror, having taken by force something which did not rightfully belong to her? It was given to her because she thought it was hers and rightfully belonged to her.

Mr. EDMONDS. Of course, you know there is still a question as to who owns that property.

Mr. HUGHES. Yes.

Mr. LEHLBACH. Was any use made of this vessel from May 11, 1918, until the close of the war by which Italy sustained damage? In other words, by reason of our possession of the vessel have they sustained any damage?

Mr. HUGHES. That would be a question for the determination of the Shipping Board.

Mr. LEHLBACH. It was sailed under the Austrian flag and that was the only flag under which it was sailed until Austria entered the war.

Mr. HUGHES. There is a question there, during the continuance of the war, which would deserve consideration. But it is now, you know, over two years since the armistice, and there has been a long period when this vessel has been used for the Shipping Board and not for war purposes at all. So that my whole suggestion is that it should be considered by the Shipping Board to determine what is just compensation.

Mr. LEHLBACH. But between the armistice and the entering into the Austrian treaty, not with ourselves but with other powers, the seas were not free to Austrian ships, were they?

Mr. HUGHES. It was free to these ships over there which were seized by Italy.

Mr. LEHLBACH. But it was not the territory of the Italian Government until after the treaty had been entered into by which Trieste was ceded to Italy. During the armistice that was practically Austrian territory.

Mr. HUGHES. But as a practical matter, Austria, being, in truth, as a power, wiped out, these ships of this very company—that is, all the ships of this company except the *Martha Washington*, which had been taken by the Italian Government during the war, have sailed the seas ever since the war ended in profitable use for this company.

Mr. CHINDBLOM. Might it not be taken into consideration the date when the other ships were put into use?

Mr. HUGHES. I am not arguing, because I would have to go into a good deal of analysis of facts which I have not got as to the basis for compensation. I am assuming the Shipping Board would take up for consideration the natural view of this subject which has been well suggested here, with respect to compensation. And I am also assuming there is a very long period of time during which this vessel has not been used for war purposes, when it could have been used and would have been used really by the true owner, and we are taking, as against Italy and as against Italians, profit to ourselves from operating this ship. Now, my conception of doing justice and recognizing an obligation and executing a wise policy is to do it, if you begin to do it, thoroughly and completely.

Mr. EDMONDS. Do not say profit from operating the ship; just say credit for operating the ship.

Mr. HUGHES. I accept the correction [laughter]. The point I make is this, that we can not—I mean by that the people and the representatives of the people—it seems to me, stop half way in doing that which we think ought to be done. The question is what ought to be done here, and just before this last question was put I was going back to the background of this to get the real basis for this action. And I find that real basis not at all in the recognition of Italy as a conqueror any more than the recognition of France as a conqueror of Alsace-Lorraine. They are not being given and should not be given property as conquerors, but the properties are being given and returned to them as territory they ought to have; and therefore it ought to be recognized as being Italian at this time and we ought to provide the ship should be returned to the Italians and they should have fair compensation, with due consideration of all the elements entering into it, for the time it has been used by us. In other words, if there is a duty here, I most respectfully suggest that it be completely discharged.

Mr. WHITE. And not compromised.

Mr. HUGHES. And not compromised. Let us do what we think we ought to do. We are a great nation here with boundless resources. Italy is impoverished and struggling almost for her very life. We are not doing this in the sense of gratuity, but it is a question whether we should take something and get the benefit of it without paying for it. And, as for the ship, the ship is far more important than paying for it. Therefore, we say the ship. With respect to the use, why should we take, as against Italy, the benefit of the use? Why should we not discharge the whole moral obligation and execute the policy completely? I thank you. [Applause.]

Mr. BURROUGHS. Just one question, if I may ask: By use of the words "just compensation" in section 3, assuming that this bill is passed in the form in which it is presented here, would you understand that Congress would be admitting that some compensation is due?

Mr. HUGHES. I should think that it should very likely be so argued. In other words, I do not, as I understand the facts, think there is any doubt but what some compensation is due. And I base that on the fact that for a very long period this ship has been operated in a service for account of the Shipping Board where it could have been operated for account of this Italian corporation and could have been operated under the flag of the Italian Government.

Mr. BURROUGHS. You mean for the time since the war terminated?

Mr. HUGHES. I would not say the exact date, but whenever that state of affairs arose. Now, what did we do in regard to the transportation of troops to Great Britain on British ships? You probably

have more accurate information on this than I. Did we pay for it, or did we confiscate the use of our associate's ship because they were used for the transportation of soldiers? There are several questions there which they had to consider in determining just compensation, and in order that this whole thing shall be done fairly in relative consideration to other matters, it might be said the fact that for a time these ships were used for the transportation of troops, that that time should be taken out. On the other hand, if we paid Great Britain for transporting the troops, and this is really an Italian ship which would have been used by Italy, why make a distinction between Great Britain and Italy? And I submit you will not, in passing this bill, be recognizing any particular sum as just compensation, but you will have invested the Shipping Board with full authority to establish just compensation.

Mr. EDMONDS. What amount was presented by Mr. Sandford, before the Shipping Board, when he asked for compensation?

Mr. HUGHES. Mr. Sandford will have to answer that.

Mr. EDMONDS. What figure or estimate did you name when you appeared before the Shipping Board?

Mr. SANDFORD. They simply took the requisition rates which they established for all other vessels of this kind—the passenger requisition rates—and applied them.

Mr. EDMONDS. That amounts to about $2,000,000?

Mr. SANDFORD. It figured $68,574 a month.

Mr. EDMONDS. For how long?

Mr. SANDFORD. It is two years and a half now.

Mr. EDMONDS. Nearly three years?

Mr. CHINDBLOM. I think, Judge, it would be well if we could get that figure established at least as to what the claim is going to be. Our experience is when we get up on the floor of the House we have to answer questions. I do not know there will be any necessity for it if this bill is reported, but I think for the record it would be well to know just what the claim of the owners of the vessel is.

Mr. HUGHES. I am not prepared to state that claim, because I came into the matter as counsel with respect to this bill. As I understand it, that whole question would go to the Shipping Board, and, therefore, I did not analyze the facts to see what sort of claim would be sustainable. I do not know whether Mr. Sandford is prepared to speak on that subject or not.

Mr. SANDFORD. No; we have not considered that. Back in April we made the proposition to the Shipping Board that as this vessel was very much needed in the Trieste-New York service, if they would operate her in that service we would limit our claim for any compensation, for the period commencing with their putting her in that service, to the net profit she might make in that service.

Mr. CHINDBLOM. Was that done?

Mr. SANDFORD. No; they did not do it.

Mr. CHINDBLOM. Is there any other vessel of the Shipping Board in that Trieste-New York service?

Mr. SANDFORD. The Shipping Board had one vessel they operated there, the *Susquehanna*, but they took it away when they sold it, I think, to the company operating in the Baltic.

Mr. CHINDBLOM. Is there any vessel now operating in that service?

Mr. SANDFORD. No American vessel that I know of. Other vessels of this same company are being operated in that service.

Mr. DAVIS. What is the present condition of the *Martha Washington?*

Mr. SANDFORD. She was redelivered in February by the Army to the Shipping Board, refitted for passenger service, and has been operated since about the end of March in the South American service to the River Plata and Buenos Aires.

Mr. WHITE. What is the tonnage?

Mr. SANFORD. Eight thousand three hundred tons gross; something less dead weight.

Mr. BURROUGHS. Along the line of the last question I asked, what would you say to the suggestion if instead of the words "just compensation," the following words were used: "Such compensation, if any, as shall be found to be justly due."

Mr. SANDFORD. I do not see any objection to that.

Mr. HUGHES. I am not presenting this with the idea of getting any special foothold with respect to this, that, or the other matter; simply as to the broad question of equity to be thrashed out and finally determined in all its aspects on that basis.

Mr. HARDY. In that sense, too, the vessel was certainly put under the Austrian flag by the owner, and by doing it the owner gave it the appearance of being subject to seizure and use. When war was declared it gave it at least the appearance of being subject to our seizure and use, and to hold us now to the payment of rental, when we had taken a vessel under the guise of its being an Austrian vessel, which it appeared to be at the time we took it, by an act of the owner himself, is there not an equity there that would militate against the claim of the owner, just assuming that we turned the vessel back as soon as we find that fact out?

Mr. HUGHES. I would illustrate it this way: Suppose there was a man, who was a citizen born in Alsace-Lorraine, who had 20,000 shares of stock in an American corporation, and we got hold of that stock through the Alien Property Custodian and held it. Then the matter comes up under the trading with the enemy act, and we say Alsace-Lorraine has gone to France; we are going to treat you as a French citizen now, and are going to look at the history of this, and not going to consider you are an alien enemy, and we will let you have the stock, but we will keep the dividends collected in the meantime.

Mr. HARDY. But suppose there were no dividends.

Mr. HUGHES. Yes; but the dividend is what you get from the use, and here is the profit of the use, and just compensation involves consideration of the profit of the use.

Mr. WHITE. Their rates have been high enough so that there should have been some profit anyway.

Mr. HUGHES. Yes.

Mr. DAVIS. Suppose our Government made no profit in the operation of this vessel during the past three or four years?

Mr. HUGHES. You know what you consider when you do an act of fairness and restitution. You consider what the other fellow could have made as well as what you made. In other words, prop-

erty is always usable. Suppose I go into a house and I sit there and use that house, and I am sued for use and occupation, and I say, "You could not have used this house" to the landlord.

Mr. DAVIS. But this is a very doubtful proposition as to whether they could have operated it profitably or not.

Mr. HUGHES. My information is they could; that is my understanding of the matter. But I always come back to this, that every detail of that sort, with respect to the use we made, the use they could have made, the value of the vessel in use, and so forth, should be considered with respect to their pay. Underlying the proposition, however, assuming there is something which otherwise would be fair to pay, is the question shall we keep what has been the return on the vessel.

Mr. HARDY. If by the action of the owner himself he has caused himself to be put out of possession?

Mr. HUGHES. Take the situation of the lady who marries a foreigner and by an act of decisive choice puts herself in a position where her property might be seized by this Government when we became at war with a nation with which this Government was not then at war. You had occasion to consider that when you passed the trading with the enemy act, and you thought an American citizen had denationalized herself by marrying an enemy and by her own act putting her property under enemy control; but that that was not a reason for confiscating it.

Mr. DAVIS. Suppose that the owners of a majority of the stock in the German vessel we captured were ladies and they subsequently married men who were American citizens; that would not alter the situation with regard to that vessel, would it?

Mr. HUGHES. I am not prepared to follow that; I do not get that exactly.

Mr. DAVIS. I will state it a little more clearly, perhaps, in a different way. Suppose that the owners of one of these German vessels we seized, subsequent to that time should become citizens of this country and before final disposition of the ship?

Mr. HUGHES. That is very different, we conceive, from this case. Broadly, the question is this: This is not a German ship nor an Austrian ship; it is an Italian ship that always has been regarded as an Italian ship because of the fact it was in Italia Irredenta; but technically and rightfully we regard it as an Austrian ship because it flew the Austrian flag. But when Italy obtained the right to domination over that territory, we will look at it from the standpoint it is under the sovereignty of Italy and we will consider it an Italian ship and account for it accordingly.

Mr. LEHLBACH. Why should the American Government, in returning the ship, discharge any liens against it other than liens the American Government has created?

Mr. HUGHES. That is perfectly satisfactory.

(The committee thereupon adjourned.)

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